

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

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COMMENTS OF THE COALITION OF FILM MAKERS

The Coalition of Film Makers (the "Film Coalition"), comprised of the Directors Guild of America, the American Society of Cinematographers, the International Photographers Guild, Local 600, IATSE, AFL-CIO, and Panavision International L.P., by its attorneys, hereby submits the following comments with respect to the Public Notice, released November 27, 1996, in the above-captioned proceeding. In the Public Notice, the Commission seeks comment on an agreement reached among broadcasters, the consumer electronics industry, and the Computer Industry Coalition on Advanced Television Service ("CICATS") with respect to digital television ("DTV") standards (the "Agreement").

The Film Coalition participated in the discussions that led to the Agreement, but, because of the bad faith of the Broadcasters Caucus¹, the Agreement does not address the principal concern raised by the Film Coalition in this proceeding, which is that films should be transmitted in their original, or native, aspect ratio without cropping or "panning and scanning." Therefore, the relevant elements of the Agreement cannot be adopted *in toto* by the

¹ The Broadcasters Caucus is comprised of ABC, Inc.; Association of Maximum Service Telecasters, Inc.; Association of America's Public Television Stations; Association of Local Television Stations, Inc.; CBS, Inc.; Chris Craft Industries, Inc.; Fox Television Stations, Inc.; National Association of Broadcasters, National Broadcasting Company, Inc.; Public Broadcasting Service; and Tribune Broadcasting Company. The Broadcasters Caucus was the only representative of the broadcast industry participating in the four-way discussions.

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Commission.²

Specifically, because the DTV standard agreed to by these parties would continue to permit the cropping or "panning and scanning" of films, the Agreement fails to ensure that the public will have the ability to view films on television in the manner in which they are created by film makers and displayed in motion picture theaters. In addition to undermining consumer choice, a DTV standard that permits cropping and panning and scanning also jeopardizes principles of artistic creativity, the promotion of which, Chairman Hundt made clear, is an objective of this proceeding.³ These points were underscored recently in a November 26, 1996, statement that was signed by nearly 500 members of the Hollywood creative community and attached hereto.

I. THE BROADCASTERS CAUCUS HAS NOT PARTICIPATED IN GOOD FAITH IN THE DISCUSSIONS UNDERLYING THE AGREEMENT

At the suggestion of Commissioner Ness, the Film Coalition and the parties to the Agreement engaged in a series of discussions over the past month. In urging the interested parties to reach an accommodation, Commissioner Ness noted that there was "significant common ground" shared by the parties and, in this regard, that she was "confident that these differences can be resolved without government present if the parties work in good faith... ." ⁴ Knowing of the Film

² The Film Coalition also notes the December 4, 1996, letter comments of Digital Theater Systems, L.P., regarding incorporation of the ATSC audio standard into the Commission's rules. There is no justification for mandating the audio standard if the video formats are not mandated. The Film Coalition, which seeks the widest possible range of tools for filmmakers to express their artistic vision, does not believe that filmmakers, in effect, should be limited to only one augmentation process that allows for audio enhancement. Therefore, the Film Coalition supports dropping the audio format (A/52) from the mandated portion of the ATSC DTV standard, as requested by Digital Theater Systems.

³ Fifth Further Notice of Proposed Rule Making, MM Docket No. 87-268 (Rel. May 20, 1996), Separate Statement of Chairman Hundt at 1.

⁴ Letter from Commissioner Susan Ness, October 24, 1996, at 1.

Coalition's interest and position in this proceeding, Commissioner Ness specifically included the Film Coalition in her invitation, despite the views of the Broadcasters Caucus that the Film Coalition's concern was not properly cognizable by the FCC.

The Film Coalition shared Commissioner Ness' view that a DTV standard that satisfies the interests of the broadcasters, consumer electronic companies, the computer industry, and the Hollywood creative community could be forged if the parties were willing to work out their differences in good faith. Moreover, although consumers were not represented in the four-way, industry discussions, filmmakers have no financial interest in any particular DTV standard, and a standard that serves the artistic interests of the Hollywood creative community also serves consumers' interests by enhancing their rights to view films the way they were intended to be seen by their creators and the way that the public sees them in theaters.

Notwithstanding the efforts of the Film Coalition to accommodate the legitimate interests of the broadcasters, the Broadcasters Caucus, never intended — nor did they — work in good faith to meet the concerns of the Film Coalition. Indeed, as noted above, the broadcast industry initially sought to exclude the Film Coalition even from participating in the joint discussions to reach a DTV standard that satisfied the interests of all the affected parties. Having failed to exclude the Film Coalition from Commissioner Ness' invitation, the Broadcasters Caucus simply stonewalled the Film Coalition and refused to negotiate in good faith. Even after the Agreement was reached and announced, the Film Coalition stood ready to meet with the Broadcasters Caucus to see if a last ditch effort to have its concerns addressed was possible. The Broadcasters Caucus, however, thwarted any such effort.

II. THE FILM COALITION'S CONCERNS MUST BE ADDRESSED BY THE COMMISSION PRIOR TO ADOPTION OF THE DTV STANDARD.

Some have argued that a requirement that films be displayed in their native aspect ratios is a copyright or private contract issue and not a matter that the Commission should address through DTV standards.⁵ This argument is without merit. From the beginning, the proposed DTV standard dealt with aspect ratios in a variety of ways. The ATSC standard, as originally proposed, for example, dictated two aspect ratios — 1.33:1 (4:3) and 1.78:1 (16:9). The only reason those aspect ratios will not be mandated by the FCC is that the parties to the Agreement decided that Table 3's 18 video formats in the ATSC standard will not be incorporated into the FCC rules. The Commission never suggested that there was some legal infirmity in incorporating the ATSC-suggested aspect ratios in the FCC rules, when it proposed to do so prior to the Agreement.

More importantly, the ATSC standard, minus Table 3, which the Broadcasters Caucus and others are urging the Commission to adopt, contains an automatic "pan and scan" feature that, unless disabled, will permit broadcasters to crop film material when it is displayed.⁶ Given the record of this proceeding and its objective of promoting artistic creativity, such a pan and scan feature has no place in a government-mandated DTV standard.

Unfortunately, reliance on contract and copyright principles to safeguard the public's right to see films displayed on television in their original aspect ratio has proven futile. In the past, when private remedies, or the market, has failed to achieve desirable broadcast policy objectives, the Commission has found it

⁵ See, e.g., "Film Makers Fail to Win Concession in Digital TV Standard," The New York Times, November 28, 1996, at D2.

⁶ See ATSC Doc. A53, Annex A, § 5.1, referencing ISO/IEC Standard 13818-2 (MPEG 2 video).

appropriate to impose regulatory requirements.⁷ The situation at hand is no different.

The fact that the Agreement does not address the concerns raised by the Film Coalition is particularly troubling in light of the ease with which the Film Coalition's interests can be accommodated. Indeed, broadcasters, when defending the efficacy of the ATSC DTV standard in their comments in this proceeding, noted that a film produced in a 2.4:1 aspect ratio and transmitted to a receiver with a 1.78:1 (16:9) aspect ratio would occupy 100% of the screen's width and 76% of the screen's height.⁸ In short, there is no compelling economic or technological argument against requiring broadcasters to transmit films in their native aspect ratios.

The Film Coalition worked diligently and in good faith to seek common ground with the Broadcasters Caucus so that a public interest requirement that is well within the technical capabilities of broadcasters would not have to be adopted over their objections. In the face of the Caucus' intransigence and lack of good faith, however, the Commission must fulfill its own public interest responsibilities to consumers who will have no opportunity to express their desire to see films on television as they see them in theaters.

The Film Coalition has no desire to stand in the way of the expeditious adoption of an appropriate DTV standard. However, in light of the fact that the DTV standard reflected in the Agreement does not advance the important public


⁷ Thus, for example, Section 73.1217 of the FCC's Rules prohibits the broadcast of hoaxes, and Section 73.1206 prohibits the broadcast of telephone conversations where any party to the call does not know it is being broadcast or will be broadcast. Additionally, FCC policies preclude host selling on children's programs, news staging or distortion, and the use of subliminal advertising.

⁸ Broadcasters' Comments at 12.

interests served by a requirement that films be broadcast in their native aspect ratios, the Film Coalition must urge the Commission either to reject the DTV standard set forth in the Agreement or to modify that standard to include a prohibition against the cropping or panning and scanning of films transmitted in a DTV format. Failure to do so will imperil consumer choice and artistic creativity and, in turn, the great promise of DTV.

Respectfully submitted,

DIRECTORS GUILD OF AMERICA
AMERICAN SOCIETY OF
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December 6, 1996

ATTACHMENT

November 26, 1996

With the likelihood of wider TV screens in the digital future, we are dismayed at the news that the F.C.C. has indicated that it may approve conclusions reached by negotiations between computer industries, television broadcasters and television set manufacturers that do not provide for redress of the grievance of, and relief for, film artists, namely, the transmission in the digital world of the original aspect ratio of the motion pictures we make. Our core requirements are modest and have not been satisfactorily addressed in those meetings. We urge you not to approve these agreements until the relatively simple and enormously important principles of integrity, for both the work of film artists and the rights of consumers to see that work unaltered, are addressed in terms that require the transmission to the audience, of the original aspect ratio of any motion picture.

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